

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

Table 1. List of commenters submitting written comments before the close of the public comment period.

No.	Commentor	Date Received
1	Kenneth C. Farfing, City of Signal Hill (Is not in the Ballona Creek Watershed)	July 12, 2007
2	Howard Gest, Burhenn & Gest LLP (Representing the Cities of Bellflower, Carson, Cerritos, Downey, Paramount, Santa Fe Springs, Signal Hill and Whittier none of which are in the Ballona Creek Watershed.)	August 6, 2007
3	Mark Gold, Heal the Bay and Tracey Egoscue, Santa Monica Baykeeper	August 6, 2007

Table 2. Responsiveness summary for written comments submitted before the close of the public comment period.

No.	Author	Comment	Response
1.1	Signal Hill	Requested that the meeting location be changed from the City of Ventura to the Metropolitan Water District in Los Angeles.	The meeting location was changed to accommodate stakeholders.
2.1	Burhenn and Gest	<p>Section 1 the Addendum indicates that the purpose of the TMDL (the "project") is in part to adopt a TMDL "in a manner timely enough to avoid federal intervention in state water quality planning, which would occur as a result of United States Environmental Protection Agency's obligations under section 303(d) [of the Clean Water Act] and under a federal consent decree that would require USEPA to establish these TMDLs if the State does not do so."</p> <p>This is a change from the description of the original TMDL. That project description did not identify the need to adopt a TMDL before U.S. EPA as a project requirement. This is apparent</p>	<p>The project purpose described in the Addendum is not a change from the project purpose of the original TMDL. The Addendum merely defines the project purpose in one location. The project purpose was previously discussed in several of the CEQA substitute documents, which includes the CEQA Checklist and the staff report.</p> <p>The staff report page 2 states, "Analytical Unit 57 is for metals listings in the Ballona Creek Watershed. The consent decree also prescribed schedules for certain TMDLs, and according to this schedule, a TMDL for Analytical Unit 57 was to be adopted by the Regional Board by March 22, 2004. Under the terms of the consent decree, USEPA was initially required to either approve a</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
		<p>from a review of the "Description of the Proposed Activity" section of the CEQA Checklist for the TMDL, dated March 25, 2005, as also from the Regional Board's June 2, 2005 resolution, which states that the "project itself is the establishment of a TMDL for toxic metals in Ballona Creek." Resolution No. R05-007, paragraph 19. If this is the same project as the original TMDL, then the purpose should be the same. If the purpose is now different, than it should be recognized that the project is also different.</p>	<p>state TMDL or establish its own, by March 22, 2005. USEPA and the consent decree plaintiffs recently agreed to extend the completion deadline to December 22, 2005, in order to enable the State to complete its adoption process and USEPA to approve the State-adopted TMDLs for this water body."</p> <p>Thus, the project purpose was clearly stated in the substitute documents for the previously adopted TMDL. It should be noted that if the project purpose were different from the one stated in the previously adopted TMDL, which it is not, it would not change, in substance, the action before the Regional Board, which is to consider the alternatives analysis and consider adoption of the proposed TMDL.</p> <p>The commenter is well aware through its and its counsel's participation in many Regional Board TMDL proceedings that meeting the consent decree deadlines is extremely important to the Regional Board because of the Regional Board's desire to maintain regional control over water quality. In any event, the writ of mandate ordered the Regional Board to adopt and consider an alternatives analysis, and the Regional Board is not bound by the expression of the project purpose from the previous documents. Nothing in the writ of mandate bars the Regional Board from clarifying, or even modifying, the project purpose</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

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			(it has not been modified), which of course is the benchmark against which feasibility of alternatives must be measured. The commenter has cited no authority for the proposition that a previous statement of the project purpose is binding on an agency when reconsidering a regulation in light of writ ruling that there has been a CEQA infirmity.
2.2	Burhenn and Gest	With respect to Alternative 1, the Addendum indicates, on page 8, that the original Staff Report, CEQA documentation and tentative Basin Plan Amendment "included extensive discussion" of the methods of compliance "and their foreseeable environmental impacts." We respectfully submit that such discussion was entirely inadequate and in violation of CEQA. The Superior Court found in its Statement of Decision that the environmental discussion was barely adequate in many aspects. There were some portions of the CEQA discussion that the court did not address that were neither adequate nor extensive. (It should be noted that the CEQA checklist consisted of only 15 pages, as compared with the approximately 300-page CEQA Substitute Environmental Document recently prepared for the LA River Trash TMDL.)	In the <i>Cities of Bellflower</i> case, the Court has already ruled that Alternative 1 was an acceptable alternative by ruling that the TMDL was lawful. The Court ruled that the analysis of implementation alternatives, potential impacts and mitigation measures was adequate and supported by substantial evidence. Nonetheless, it is worthwhile to affirm the statement in the Addendum that the CEQA substitute documents include an extensive discussion of the methods of compliance and their foreseeable impacts. Staff shall reiterate the fact that the CEQA substitute documents do not merely consist of a 15-page checklist, but also the Staff Report, Resolution, Basin Pan Amendment, and responses to comments. The Staff report contains extensive discussion of the reasonably foreseeable methods of compliance (pages 45-49, and 52-58) and this discussion is based on several references (Caltrans, US EPA, FHWA, Devinney et al, etc.). The responses to comments

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
			<p>contain additional discussion of potential compliance measures as well as potential impacts and mitigation measures, which are also discussed in the CEQA Checklist and the Resolution.</p> <p>The commenter's suggestion that the Metals CEQA analysis is deficient, notwithstanding the judgment upholding that analysis, merely because a subsequent TMDL's environmental documents had more pages, is unsupported by legal authority.</p>
2.3	Burhenn and Gest	We formally request that the entire record of comments on the Ballona Creek TMDL, to the extent that it has not already done so, be incorporated into the administrative record for the adoption of this TMDL.	<p>The Regional Board has adopted three TMDLs for Ballona Creek; therefore, staff is unable to decipher the request.</p> <p>If the comment is referring to the comments submitted on the Ballona Creek Trash or Bacteria TMDLs these comments will not be incorporated since those comments are not relevant to the proceeding currently before the Board.</p> <p>If the comment is referring to the comments submitted on the Ballona Creek Metals TMDL, the entire administrative record for Resolution No. 2005-007 will be included as part of this proceeding, however, most of those comments and responses are irrelevant to the substance of the issues under consideration in this proceeding.</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
2.4	Burhenn and Gest	Additionally, the discussion of potential adverse impacts in the Addendum does not reflect the previous CEQA analysis. For example the Addendum indicates that structural BMPs may include installation of such devices as infiltration trenches and sand filters "at critical points" in the storm water conveyance system. There was no analysis in the CEQA documentation for the Ballona Creek Trash TMDL that identified such "critical points."	Staff disagrees, but cannot decipher the point of the comment. This comment is not relevant to the action before the Board. It addresses the adequacy of the implementation alternatives analysis, on which the Court has already ruled. The court ruled that the Board's program-level analysis was adequate. These storm water conveyance systems belong to the County and Cities who best know where the "critical points" are located.
2.5	Burhenn and Gest	With respect to the adoption of a U.S. EPA TMDL, Alternative 5, the Addendum concludes that the adverse impacts would be more severe because EPA would simply require compliance with the TMDL at the time of NPDES permit renewals. Addendum, p. 12. There is no evidence in the record to suggest that EPA would adopt such a compliance schedule. In fact. U.S. EPA has stated that TMDLs may be reflected in municipal storm water permits through BMPs and monitoring. See EPA Memorandum from Robert H. Wayland and James A. Hanlon to Water Division Directors, November 22, 2002, p. 2.	<p>On page 41 of the transcript from the July 7, 2005, Regional Board meeting, Melinda Becker, Regional Program Section Chief, stated, "...EPA will be compelled to establish the [Ballona Metals] TMDL, and they have no authority to provide implementation; so there would not be the flexibility that's provided in the State TMDL."</p> <p>In addition on pages 26 and 43 of the transcript, both Executive Office Jon Bishop and Regional Board Chair Susan Cloke, respectively, acknowledged that all oral testimony from the LA River Metals TMDL hearing held on June 2, 2005, was incorporated into the administrative record for the Ballona Creek's Metal TMDL.</p> <p>On pages 38-39 of the transcript from the June 2, 2005 Regional Board meeting, Dave Smith, U.S. EPA Region 9 stated, "If we -- if EPA does have to establish these TMDLs, I anticipate that -- that</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

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			<p>the TMDL numbers, the allocation numbers, would be identical or virtually identical to those that are before you today; but they would not have the benefit of the reasonable implementation schedule that has been proposed.” Dave Smith also requested (pages 33-34 of the transcript) that his testimony be placed on the record for the Ballona Creek Metals TMDL.</p> <p>EPA’s guidance memo does not state that an EPA-established TMDL would have to include an implementation schedule.</p> <p>In response to a comment from the Coalition for Practical Regulation in the recent adoption of the Los Angeles River Trash TMDL, staff reconfirmed with USEPA that it would not establish a compliance schedule for a TMDL. A copy of the email from EPA counsel Suzette Leith is included in the administrative record for this TMDL.</p> <p>The effect of requiring incorporation at the next permit cycle is not based on a presumed EPA compliance schedule, but as the commenter’s counsel is well aware from participating in numerous TMDL proceedings, from federal regulations that require permits be consistent with the assumptions of available waste load allocations.</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
2.6	Burhenn and Gest	<p>The Regional Board is not compelled to adopt the particular TMDL that has been proposed. We submit that there are a number of additional alternatives that should have been discussed in the Addendum and presented to the Regional Board for consideration.</p>	<p>The environmental documents analyze a reasonable range of alternatives as required by CEQA guidelines. According to CEQA Guidelines section 15126.6, "An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation." The alternatives considered include all those suggested by the commenter during several rounds of post trial briefings in the <i>Bellflower</i> litigation, in addition to others suggested for other TMDLs. It is a reasonable range. The commenters' statement that the Regional Board "should have" discussed these new ideas conceived of by the commenters is unsupported by an explanation or evidence of how the alternative would be feasible, meet the project purpose, and would result in substantially less significant impacts than the project as proposed, or other already analyzed alternatives. Absent such information, there is simply no basis to contend that the alternatives analysis that was performed is inadequate.</p> <p>Nevertheless, each of these new potential alternatives are analyzed below, based on their feasibility, whether or not they accomplish most of the basic objectives of the project, and whether or not they avoid or substantially decrease any of the significant effects of the project (14 Cal. Code</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
			<p>Regs. §15364). None of the alternatives meet the three requirements of being feasible, meeting the project's purposes, and resulting in substantial environmental advantages over the project as proposed.</p> <p>In fact, it appears that most of these proposals are not directed toward an environmentally superior project, but to a project that is less burdensome on the commenters from a regulatory perspective. Alleviating economic and other non-environmental burdens of a proposed regulation is not within the purview of CEQA's requirements.</p>
2.7	Burhenn and Gest	<p>One alternative would be to modify certain interim compliance dates to allow additional time for the completion of special studies called for in the TMDL and the incorporation of the results of the studies into implementation of the TMDL. Under this alternative, deadlines for the submission of the special studies, for the reopening of the TMDL, for the submission of implementation plans and for the first jurisdictional group compliance demonstration all would be extended a short period beyond the dates proposed. All other compliance dates would remain as proposed. In the LA River Metals TMDL, a number of cities have commented that there is insufficient time to complete the special studies required in that</p>	<p>The proposed alternative was not considered because it is not an independent alternative and it would not result in substantial environmental advantages over the project as proposed.</p> <p>A modification of certain interim compliance dates does not constitute an independent alternative to the TMDL. For projects involving the use of land, alternatives either consist of different uses of land, or uses at different locations (<i>Citizens of Goleta Valley v. Board of Supervisors</i>). A modification of the TMDL implementation schedule does not fall into either of these categories. Furthermore, in the <i>Cities of Bellflower et al.</i>, the Court ruled that the Regional Board is only required to consider alternatives to</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
		<p>watershed.</p> <p>We believe that this alternative would provide significant environmental benefits. If the results of the special studies, which could well indicate that higher waste load allocations, and thus less rigorous implementation efforts, are indicated, are incorporated into the TMDL, the environmental impacts associated with the construction and maintenance of structural and non-structural BMPs, including with respect to infiltration of contaminated water, air impacts, traffic impacts, recreational impacts, etc. could potentially be avoided or at the least substantially mitigated.</p> <p>At the same time, this alternative would still allow implementation of the TMDL without ultimate delay, since no extension of other compliance dates, including the final compliance date, is proposed. Thus, this alternative meets the requirement of a "reasonable alternative" that "feasibly attains" the goals of the project but also "substantially lessens" significant environmental effects.</p>	<p>the project as a whole. The Regional Board is not required to consider parts of its implementation plan.</p> <p>A modification of interim compliance dates at the front end of the implementation schedule does not alter the final compliance date or affect the spacing of implementation projects which might reduce environmental impacts. It is not a significant difference from the TMDL as proposed.</p> <p>Furthermore, it is not apparent that the results of special studies would significantly modify waste load allocations. There is no evidence that implementation of the TMDL based on the results of special studies would reduce environmental impacts, and generally speaking, marginally increasing waste load allocations translates into decreasing the environmental protection that is the purpose of the regulation. In any event, there is no evidence that waste load allocations would be increased based on the results of special studies. Even if the waste load allocations were increased, it would not necessarily result in decreased implementation efforts.</p> <p>Finally, none of the responsible jurisdictions or agencies within the Ballona Creek watershed have asked for a modification to the compliance schedule.</p>
2.8	Burhenn and Gest	Another alternative would assign non-point	This proposed alternative presumably refers to

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
		<p>source load allocations based on atmospheric depositions and work in control strategies designed to reduce metals loadings. This would result in a reduction of the waste load allocations assigned to dischargers and would result in fewer environmental impacts from the installation and maintenance of structural and non-structural BMPs. In addition, a reduction in the metals emitted to the atmosphere would be a net benefit to the residents of the watershed. This alternative could still be designed to attain the water quality standards set in the proposed TMDL and on a similar time frame. It would thus qualify as a feasible and reasonable alternative and, we believe, should have been considered by Regional Board staff.</p>	<p>indirect atmospheric deposition, as the contribution of metals loading from direct air deposition is negligible, as documented in the staff report on pages 28-29.</p> <p>An alternative which assigns load allocations to indirect atmospheric deposition sources was not considered because it is not an independent alternative, it is not feasible, and it would not result in substantial environmental advantages over the project as proposed.</p> <p>First, this alternative is not an alternative to the project as a whole – it is an alternative to the allocation scheme under the TMDL. In the <i>Cities of Bellflower et al.</i>, the Court ruled that the Regional Board is only required to consider alternatives to the project as a whole. The Regional Board is not required to consider alternatives to the load allocations that are part of its implementation plan.</p> <p>Second, this alternative is not feasible. It is not possible to parse out the contribution of indirect air deposition from the pollution emanating from storm drains. The legality of assigning load allocations to indirect air deposition sources is also uncertain. Specifically, waste load allocations must be assigned to point sources and load allocations must be assigned to non-point sources. Indirect air deposition (air pollutants</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
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**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

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**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
			<p>precipitated from the strategy, or that the impacts would result in less significant impacts than the proposed alternative. If the contribution from automobiles or other indirect air deposition sources were removed, it is possible that storm water would still require treatment to meet the waste load allocations, given the magnitude of exceedances and the lack of knowledge about the contribution of air deposition to pollution in storm water.</p> <p>In short, there is no evidence that this proposal is lawful, feasible, and that it would achieve the project's purposes with substantially less significant impacts than the project as proposed.</p> <p>This alternative and alternative in comment 2.9 are essentially a request that the Regional Board absolve the municipalities whom Congress in the Clean Water Act deemed responsible for municipal storm water pollution, of that obligation by assigning responsibility up the waste stream to the individual contributors of the pollution that the municipalities discharge from their storm sewers. Presumably, Congress vested this responsibility in municipal point source operators because municipalities were determined to be in the best position to control the pollution emanating from within their jurisdictions (they have regulatory authority over their citizens, land uses, and businesses), and of, deference to local municipal</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

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			governance. Whatever the policies may have been, that is the structure of the Clean Water Act, and in examining alternatives to the TMDL that is required by the Clean Water Act, the Regional Board need not engage in a reinterpretation of the Clean Water Act's fundamental principles, including that point source dischargers are responsible for the pollutants that are discharged from their facilities.
2.9	Burhenn and Gest	Another alternative would be to require a reopening of the TMDL to consider advances in brake pad technology. As the Regional Board knows, current brake pads are a significant source of copper in urban waters and efforts are underway to reduce the amount of copper in brake pads.	See response to comment 2.8. The proposed alternative is not an alternative to the TMDL as proposed. Staff agrees that the use of alternative materials for brake pads would help to reduce the discharge of copper in all watersheds. The TMDL, as proposed, already contains a mandatory reconsideration in 2011. At that time, the Regional Board may consider the effects of advances in brake pad technology, and nothing prohibits the Regional Board from reconsidering the TMDL to accommodate future technological advances at any other time warranted for that matter. The question is not however, whether brake pads are a source of copper, but whether there are feasible alternatives to the TMDL with substantially less impacts. Copper is but one of the metals regulated by this TMDL. Further, to the extent that advances in brake pad technology reduce copper loadings, or other technological advances reduce loading of other levels, the TMDL as proposed would result in less impacts

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
			<p>due to less required compliance, just as reopening the TMDL would.</p> <p>To the extent the suggestion is a request to delay regulation in hopes future technological advances will make regulation unnecessary, forestalling regulation is contrary to the purpose of restoring standards as soon as practicable, and complying with the consent decree. Further, it is anticipated that the requirement to comply with regulations like this TMDL will stimulate the development of such technological advances, not forestall them.</p>
2.10	Burhenn and Gest	<p>Another alternative would focus on a water quality objective modification. Such an alternative to the proposed TMDL would be to review the water quality objectives in the Basin Plan, and to revise those objectives considering their application to storm water, consistent with the requirements of Water Code §§ 13000, 13240 and 13241. If it was the case that the water quality objectives were improperly developed, their removal would result in a TMDL that addressed only objectives that were validly developed and whose implementation would cause far fewer environmental impacts.</p>	<p>This proposed alternative would not achieve the project purpose of establishing a TMDL to attain the CTR standards and comply with the consent decree.</p> <p>The project's purpose is to comply with the requirements of section 303(d) and to resolve the impairments and maintain compliance with applicable water quality standards. The applicable water quality standards consist of beneficial uses, narrative and/or numeric water quality objectives, and an antidegradation policy. The criteria in CTR are the applicable water quality objectives for Ballona Creek. Revising the objectives is not a feasible alternative because the existing objectives are set to protect the aquatic life beneficial uses of the Ballona Creek. Revising the objectives to be less stringent would not</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

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			<p>protect these beneficial uses and would thus not maintain compliance with water quality standards.</p> <p>The commenters' suggestion that the standards may have been improperly developed is pure conjecture, devoid of any evidentiary support, as is the suggestion that any revised standard would be less stringent, and that an implementation of a less stringent standard would result in substantially less impacts over the project as proposed.</p>
2.11	Burhenn and Gest	<p>The various alternatives discussed could be "mixed and matched" to create additional alternative TMDLs. Unfortunately, the limited array of alternatives discussed in the Addendum does not meet the requirement of CEQA - that alternatives which would eliminate or significantly lessen significant environmental impacts, yet still achieve most project requirements, be considered and analyzed.</p>	<p>The alternatives suggested by the petitioners are either not independent alternatives to the TMDL, do not meet the project purposes, are contrary to the Clean Water Act, are otherwise infeasible, or would not result in substantially less significant impacts than the proposed TMDL. Therefore, any combination of the proposed alternatives would not represent an alternative that needs to be analyzed.</p> <p>The alternatives proposed by the commenters are not the types of alternatives that are contemplated by CEQA's requirement that an agency consider project-level alternatives to a proposed project. The universe of alternatives essentially consists of the no-TMDL alternative, the somebody-else's-TMDL alternative, and the different TMDL alternative. None of these alternatives are appropriate. Given the requirement that TMDLs must be established for</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
			<p>all impaired waters (and unimpaired waters), that the TMDLs must be established to attain existing water quality standards, that EPA must establish TMDLs if the state fails to do so, and that the Regional Board may not specify how any regulated entity complies with Regional Board regulations and thus broad compliance discretion is left to those regulated entities, as has been shown, there are no alternatives that are lawful and otherwise feasible, that would achieve the basic project purposes, and that would achieve substantial environmental benefits over the project as proposed.</p> <p>Given enough time, clearly the commenters could propose an infinite variety of permutations about how much time is authorized to comply, how many times the standards should be reanalyzed beforehand, which sources could ostensibly be regulated so municipal storm water agencies need not be held responsible, whether new technologies might obviate municipal expenditures, etc., are not really quarrels with the environmental impacts of the project or the Board's analysis thereof, but thinly veiled quarrels with the manner in which the Regional Board has chosen to exercise its regulatory discretion on a variety technical, policy, and legal considerations. While such decisions may not be arbitrary (and the <i>Bellflower</i> court has already sustained the substance of the regulation), characterizing them</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
			as CEQA “alternatives” does not render them true feasible alternatives unless supported by the requisite elements described in 15126.6.
2.12	Burhenn and Gest	<p>As a separate and independent matter, we submit that the Regional Board should consider the impacts of the project on global warming. In 2006, the California Legislature adopted AB 32, the California Global Warming Solutions Act of 2006. As a general matter, AB 32 requires CARB to adopt rules and regulations that would, by 2020, achieve greenhouse gas emissions equivalent to statewide levels in 1990.</p> <p>A number of courts have overturned CEQA documents that did not analyze their project's impacts on greenhouse gas emissions. We submit that the Regional should evaluate the project's contribution of those emissions (in such ways as emissions from street sweepers (increased street sweeping being an identified BMP), from construction of BMPs, from increased traffic and other air emissions). The Regional Board has not done so.</p>	<p>The CEQA substitute documents analyze the reasonably foreseeable impacts to air quality, which include increased air emissions. Increased air emissions include greenhouse gas emissions. The Court ruled that the Water Boards analysis of air impacts was adequate and supported by substantial evidence.</p> <p>The writ of mandate was expressly limited to performing a project-level alternatives analysis, and to the extent that any alleged inadequacy in the analysis of any impact may be argued to exist, or that the CEQA documentation or the regulation itself suffers any other infirmity, the issue has either been waived by the commenters as it was not raised in the litigation, or specifically adjudicated against them in the <i>Bellflower</i> case.</p>
2.13	Burhenn and Gest	We also wish to bring to the Regional Board's attention that the TMDL cannot lawfully be adopted at this time, since, as proposed, it would be an attempt to apply to storm water and urban runoff water quality objectives and beneficial use designations that were not developed and adopted in accordance with the	<p>See response to comment 2.12. This comment does not relate to the Alternatives Analysis or how that Analysis should affect the Regional Board's decision to approve the TMDL. However, the comment will be addressed here.</p> <p>This comment is similar to arguments raised and</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
		<p>requirements of California law.</p> <p>To date there is no evidence that the Regional or State Boards have ever considered the requisite factors under Water Code §§ 13241 or 13000 when developing the water quality objectives in the Basin Plan, as such objectives are to be applied to storm water.</p> <p>In fact, a comprehensive review of various documents within the Board's files conducted by Dr. Susan Paulson has shown that at no time since the adoption of the Basin Plan, and at no time in the course of any of the triennial reviews, have the requisite factors and policies required to be considered under state law ever been considered with respect to the application of said objectives to storm water. Dr. Paulson's declaration and report are submitted herewith as Exhibit 1.</p>	<p>rejected in the <i>Cities of Bellflower</i> case and arguments raised in a contemporaneous challenge by these petitioners in Orange County to the Basin Plan for this region, which a court will consider later this year.</p> <p>It seems that the commenter is challenging the application of water quality objectives for metals because the TMDL is applied through the MS4 permit. These same parties have previously challenged the MS4 permit as well, in which they argued that the Board was required to consider the economic and housing effects of the permit's requirement to comply with water quality objectives of the Basin Plan. That decision, and its collateral effects, is binding upon the commenters. The Court of Appeal rejected their argument and found substantial evidence in the record for the MS4 permit that the Board had considered the economic and housing factors of 13241. (<i>County of Los Angeles v. State Water Resources Control Bd.</i> (2006) 143 Cal.App.4th 985.) Similarly, substantial evidence exists to support a finding that the Board considered the remaining 13241 factors when deciding to apply the relevant water quality objectives. In any event, those claims are beyond the scope of this proceeding, and the writ of mandate.</p>
2.14	Burhenn and Gest	Neither federal nor state law supports the Board's position that either an objective or a TMDL may be	See response to comment 2.12. None of the authorities cited by this commenter define

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

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		<p>established based upon a mere "potential," theoretical use of the water body. Nor does the Porter-Cologne Act or the CWA allow an objective to be adopted to avoid an adverse impact of any kind, regardless of the past, present or probable future "uses to be made" of the water body or the definable impact on such uses. Accordingly, the development of a TMDL that relies on "potential beneficial uses," rather than the "uses to be made" of the Ballona Creek contravenes federal law.</p>	<p>beneficial use as being limited to an "actual" use and there is no authority within either the Porter-Cologne Water Quality Control Act or the federal Clean Water Act supporting the assertion. Moreover, this argument has already been rehearsed by the commenters in a number of other TMDL and permit proceedings, and recently rejected by the trial court in the case that precipitated this action. The court determined that "probable future" is included within the definition of "potential." <i>Cities of Bellflower v. LARWQCB</i>. Notably, the "potential uses" designated in the basin plan have been approved by USEPA and are therefore the "applicable standards" to which the 303(d) TMDL requirement applies. No uses have been established that are designated "probable future to be made" and no such uses have been approved by USEPA. Accordingly, this argument is without substance.</p>
3.1	Heal the Bay and Santa Monica Baykeeper	<p>Heal the Bay and Santa Monica Baykeeper strongly support Alternative 1 which is the Regional Board Staff's recommended alternative in the Alternatives Analysis for each of the Draft TMDLs. Alternative 1 is based on the previously adopted TMDLs (Resolution Nos. 2005-006 and 2005-007).</p>	<p>Comment noted.</p>
3.2	Heal the Bay and Santa Monica Baykeeper	<p>Heal the Bay and Santa Monica Baykeeper strongly support Regional Board Staff's recommendation to maintain the timelines that were triggered by the January 11, 2006 effective</p>	<p>Comment noted.</p>

**Comment Summary and Responses for the June 22, 2007 Draft
Ballona Creek and Tributaries Metals TMDL
Comment Due Date: August 6, 2007**

No.	Author	Comment	Response
		<p>date. The responsible parties have already had over a year and a half to make progress towards meeting the adopted waste load allocations. Adhering to the time schedule established in the previously-adopted TMDL is extremely important from the standpoint of protecting aquatic life. Therefore, the Regional Board should maintain the timelines triggered by the January 11, 2006 effective date.</p>	